

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES BARBERA, JR., INDIVIDUALLY, and
as ADMINISTRATOR OF THE ESTATE OF
LORRAINE MARIE BARBERA,

Civil Action No.: X

U.S. DISTRICT COURT
100 EAST 21ST STREET
NEW YORK, NY 10010
JULY 10 2008 A 952
S.D. OF N.Y. W.D.

Plaintiff-Respondent,

- against -

PEERLESS INSURANCE COMPANY,

Defendant-Petitioner.

NOTICE OF REMOVAL

08 CIV. 5527

JUDGE KARAS

M A D A M / S I R :

Defendant-Petitioner PEERLESS INSURANCE COMPANY ("Peerless") by its attorneys, JAFFE & ASHER LLP, alleges as follows:

1. On or about May 27, 2008, Peerless was served with a Summons and Verified Complaint, via the New York Superintendent of Insurance, in an action entitled CHARLES BARBERA, JR., INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF LORRAINE MARIE BARBERA v. PEERLESS INSURANCE COMPANY, Index No. 2008/3355, which was commenced on May 9, 2008 in the Supreme Court of the State New York, Dutchess County.

2. The Verified Complaint asserts two causes of action against Peerless. The first cause of action sounds in breach of contract and seeks recovery under an

insurance policy. The second cause of action alleges "bad faith" based upon the denial of insurance coverage. A copy of the Verified Complaint is attached hereto as Exhibit A.

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3. The Notice of Removal is being filed by Peerless within thirty (30) days of the service of the Summons and Verified Complaint and is timely filed pursuant to 28 U.S.C. § 1441, 1446.

4. Peerless' time to move, answer, or otherwise respond to the Complaint has not expired.

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332; the amount in controversy exceeds \$75,000 and plaintiff and Peerless are citizens of different states.

6. Upon information belief, and at all relevant times, plaintiff CHARLES BARBERA, JR. was, and still is, a citizen of the State of New York, residing at 33 Lake Shore Drive, Pine Plains, New York 12567.

7. At all relevant times, Peerless was, and still is, a stock insurance company organized under the laws of the State of New Hampshire, with its principal place of business located at 62 Maple Avenue, Keene, New Hampshire 03431.

8. Written notice of the filing of the Notice of Removal shall be given to adverse parties, and Peerless shall file the notice with the Clerk of the Supreme Court of the State of New York, County of Dutchess, as required by law.

9. Peerless has not answered, moved or otherwise responded to the Verified Complaint and no other proceedings have occurred heretofore in this action.

10. No previous application for the relief requested herein has heretofore been made.

WHEREFORE, defendant-petitioner PEERLESS INSURANCE COMPANY

respectfully requests that this action be removed to this Court.

Dated: New York, New York
June 17, 2008

Yours, etc.,

JAFFE & ASHER LLP

By: 

Marshall T. Potashner (MTP-3552)
Attorneys for Defendant-Petitioner
LIBERTY MUTUAL FIRE INSURANCE
COMPANY
600 Third Avenue, 9th Floor
New York, New York 10016
(212) 687-3000

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

CHARLES BARBERA, JR., Individually, and as
Administrator of the Estate of LORRAINE MARIE
BARBERA,

Plaintiffs,

Index No. 2008/3355

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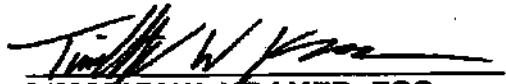
PEERLESS INSURANCE COMPANY,

Defendant.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiffs, copies of which are served upon you and to serve copies of your answer on the undersigned attorneys for the plaintiffs within 20 days after the service of this summons and complaint, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer the complaint of the plaintiff, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Poughkeepsie, New York
May 8, 2008


TIMOTHY W. KRAMER, ESQ.
Spiegel, Brown, Fichera & Coté
Attorneys for Plaintiff
272 Mill Street
Poughkeepsie, NY 12601
(845) 452-7400

To: Peerless Insurance Company
62 Maple Avenue
Keene, NH 03431

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

CHARLES BARBERA, JR, Individually, and as
Administrator of the Estate of LORRAINE MARIE
BARBERA,

VERIFIED COMPLAINT

Plaintiff,

- against -

Index No.:

PEERLESS INSURANCE COMPANY,

Defendant.

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Plaintiff, by his attorneys, Spiegel, Brown, Fichera & Coté, LLP, as and for his verified
Complaint, allege as follows:

1. At all relevant times, plaintiff Charles Barbera, Jr. was, and currently is, a resident of the County of Dutchess and State of New York.
2. Upon information and belief, at all relevant times, defendant Peerless Insurance Company was, and still is, an insurance company licensed to do business in the State of New York, by the Department of Insurance.
3. The defendant issued a policy of liability insurance to plaintiff effective from January 16, 2006 through January 16, 2007, policy number 33PM152245 (the "Policy"), covering and insuring a 1990 Chevrolet automobile, vehicle identification number 1GCGG35K8L7138421, owned by plaintiff (the "Covered Automobile").
4. The Policy was in full force and effect on March 1, 2006.
5. The Policy required the defendant to pay damages for bodily injury for which any insured became legally responsible of an auto accident.
6. Under the Policy, insured includes any family member for the ownership, maintenance or use of any auto, and any person using the covered auto.

7. On March 1, 2006, plaintiff's son, Robert A. Barbera, was permissibly operating the Covered Automobile at approximately 6:35 p.m. on private lot number 80 on Haviland Road in the Town of Hyde Park, County of Dutchess, State of New York, when he struck Lorraine Marie Barbera with the Covered Automobile, causing her to sustain serious injuries resulting in her death.

8. On or about July 21, 2006, a claim letter was mailed to defendant regarding the accident of March 1, 2006.

9. By letter dated August 8, 2006, defendant disclaimed and denied coverage for the loss based on a breach of the insurance contract, for failure to provide timely notice of this occurrence, and refused to defend or indemnify plaintiff and Robert A. Barbera.

10. On July 25, 2007 a Summons and Complaint were filed in connection with the March 1, 2006 accident.

11. On August 3, 2007, the Summons and Complaint were served on the Robert A. Barbera in connection with the March 1, 2006 accident.

12. On or about August 6, 2007, a copy of the Summons and Complaint, and Affidavit of Service, were mailed to defendant.

13. By letter dated August 13, 2007, defendant acknowledged receipt of the summons and complaint, and again advised that defendant disclaimed and denied coverage with regards to the March 1, 2006 accident.

14. Robert A. Barbera and the defendant failed to answer the Complaint.

15. On September 20, 2007 a notice of motion and motion for default judgment were filed, copies of which were sent to the Robert A. Barbera and the defendant.

16. On January 2, 2008, this Court granted the motion for default judgment and scheduled an inquest on the issue of damages, which this firm forwarded to the defendant and Robert A. Barbera.

17. The inquest on damages was held on March 24, 2008, at which the defendant and the Robert A. Barbera failed to appear. A Judgment was rendered against the

plaintiff in the amount of seven hundred fifty thousand dollars (\$750,000), together with a bill of costs, making the total sum seven hundred fifty one thousand one hundred thirty three dollars and fifty cents (\$751,133.50).

18. On or about March 14, 2008, a Notice of Settlement was mailed to defendant and Robert A. Barbera.

19. On March 24, 2008, Judgment was entered in the amount of seven hundred fifty one thousand one hundred thirty three dollars and fifty cents (\$751,133.50) against Robert A. Barbera.

20. A copy of the Judgment was mailed to Robert A. Barbera and defendant on or about April 2, 2008.

21. Upon information and belief, the disclaimer and denial of coverage by defendant was wrongful and invalid.

22. Upon information and belief, under the terms of the policy issued to plaintiff, defendant was obligated to defend and indemnify plaintiff and Robert A. Barbera up to the limits under the policy.

23. By reason of the foregoing defendant wrongfully disclaimed and denied coverage and failed to defend or indemnify plaintiff and Robert A. Barbera, causing plaintiff damages in a sum of money in excess of the monetary jurisdictional limits of all other courts having jurisdiction in this action.

AS AND FOR A SECOND CAUSE OF ACTION

24. Plaintiff repeats, re-alleges and reiterates each and every allegation set forth in paragraphs "1" through "23" inclusive with the same force and effect as though set forth herein at length.

25. Upon information and belief, plaintiff had complied, in all respects, with all provisions of the Policy.

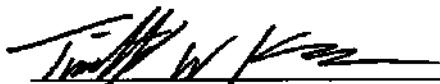
26. Upon information and belief, defendant acted in bad faith by refusing to defend or indemnify plaintiff and Robert A. Barbera.

27. By reason of the foregoing bad faith on the part of the defendant in disclaiming and denying coverage, defendant caused damages to plaintiff in a sum of money in excess of the monetary jurisdictional limits of all other courts having jurisdiction in this action.

WHEREFORE, plaintiff Charles Barbera Jr., Individually and as Administrator of the Estate of Lorraine Marie Barbera, seeks a declaratory judgment of this Court declaring that the disclaimer of coverage by defendant Peerless Insurance Company is invalid, and further declaring that defendant must indemnify plaintiff in the amount of demands judgment declaring that defendant Peerless Insurance Company must indemnify plaintiff in the amount of seven hundred fifty one thousand one hundred thirty three dollars and fifty cents (\$751,133.50).

Dated: Poughkeepsie, New York
May 8, 2008

Yours, etc.,


By: Timothy W. Kramer, Esq.
SPIEGEL, BROWN, FICHERA & COTÉ, LLP
Attorneys for Plaintiff
272 Mill Street
Poughkeepsie, NY 12601
(845) 452-7400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Index No.

CHARLES BARBERA, JR., Individually, and CHARLES BARBERA, JR., as Administrator of the
Estate of LORRAINE MARIE BARBERA,

Plaintiffs,

- against -

PEERLESS INSURANCE COMPANY,

Defendant.

SUMMONS AND VERIFIED COMPLAINT

SPIEGEL, BROWN, FICHERA & COTÉ, LLP
Attorneys for Plaintiff
272 Mill Street
Poughkeepsie, New York 12601
(845) 452-7400

STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NY 12257

Form 210

Corporation Service Company
Peerless Insurance Company
80 State Street
Albany, NY 122072543

STATE OF NEW YORK
INSURANCE DEPARTMENT
One Commerce Plaza
Albany, NY 12257

STATE OF NEW YORK
Supreme Court, County of Dutchess

Charles Barbera, Jr., Individually, and as Administrator of the
Estate of Lorraine Marie Barbera 2008/3355
against Plaintiff(s)
Peerless Insurance Company Defendant(s)

RE : Peerless Insurance Company

Attorney for Plaintiff(s) and Defendant please take notice as follows:

Sirs :

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon me of
Summons and Verified Complaint in the above entitled action on May 27, 2008 at
Albany, New York. The \$40 fee is also acknowledged.

Original to Attorney for Plaintiff(s) :

Spiegel, Brown, Fichera & Cote
Attorneys at Law
272 Mill Street
Poughkeepsie, New York 12601

Pursuant to the requirement of section 1212 of the Insurance Law, Defendant is hereby
notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant :

Corporation Service Company
Peerless Insurance Company
80 State Street
Albany, New York 12207-2543

Clark J. Williams

by Clark J. Williams
Special Deputy Superintendent

Dated Albany, New York, May 27, 2008

432317 C.A.#191492